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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision Sept. __ ,2006

1). F.A.O. No. 193 of 1994

Inderjeet Kaur and others .. Appellants

v.

Bikkar Singh and others .. Respondents

2). F.A.O. No. 733 of 1994

Bikkar Singh and another .. Appellants

v.

Inderjeet Kaur and others .. Respondents

Present : Shri P.S.Dhaliawal, Advocate,
for the appellants (in FAO No. 193 of 1994), and
respondent Nos. 1 to 4 (in FAO No. 733 of 1994)

Shri A.S.Jattana, Advocate,
for respondent Nos. 1 and 2
(In FAO No. 193 of 1994) and
appellants in FAO No. 733 of 1994)

Shri Ravinder Arora, Advocate,
for the respondent-Insurance Company
(in both the appeals).

PRITAM PAL, J.

The above mentioned two appeals, one bearing FAO No. 193 of 1994 by the claimants for enhancement and the other bearing FAO No.

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733 of 1994, by driver and owner, for shifting the liability to pay the awarded amount of compensation on the Insurance Company, are directed against one and the same award dated 24.9.1993, whereby, a total compensation of Rs. 2,40,000/- was awarded to the claimants on account of death of Gurtej Singh (28 years), who died in a vehicular accident on 24.8.1990.

In nutshell, facts culminating to the commencement of these appeals may be recapitulated thus :

On 24.8.1990, at about 2.00 PM, Gurtej Singh (since deceased) was going on a bicycle to his fields and when he reached near the Canal bridge of Jogipeer, at that time, Bikkar Singh, driver, came there while driving his tractor bearing registration No. PCT 5973, in rash and negligent manner. The tractor hit against the bicycle of Gurtej Singh (since deceased) despite the fact that he (Gurtej Singh) turned his cycle towards the *kacha* portion on the left side of the road. As a result of this accident, head of Gurtej Singh was crushed. After the accident, Bikkar Singh, driver had run away from the place of accident. Gurtej Singh died on the same day. The matter was ultimately reported to the police.

Further, the case of the claimants before the Motor Accident Claims Tribunal, Bhatinda (hereinafter referred to as "the Tribunal") was that Gurtej Singh was earning an amount of Rs. 1,00,000/- per annum from his agricultural pursuit as well as dairy farming. Claimants, namely, Inderjeet Kaur (widow) and three minor children of deceased Gurtej Singh,

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sought a total compensation of Rs. 5,00,000/- along with interest at the rate of 18% per annum..

In their respective replies, the insured and the insurer denied the allegations contained in the petition filed by the claimants. At the same time, the Insurer also took the plea that driver of the offending tractor was not holding a valid driving licence.

On the pleadings of the parties, following issues were framed by the learned Tribunal :-

1). Whether the death of Gurtej Singh took place due to rash and negligent act of driving of respondent No.1? OPA
2). To what amount of compensation the claimants are entitled to and from whom? OPA
3). Whether respondent No.1 had no valid driving licence?OPR
4). Whether the tractor in question had no valid registration certificate?OPR
5). Whether the present petition has been filed in collusion with respondents No. 1 and 2 ? OPR
6). Whether there is any violation of the conditions of the policy? If so, to what effect? OPR
7). Relief"

Learned Tribunal, after recording the evidence and hearing learned counsel for the parties, returned finding on issue No.1 in favour of the claimants and held that accident in question had taken place due to the rash and negligent driving of the tractor by its driver Bikkar Singh. Under issue No.2, it was held that claimants are entitled to a total compensation of Rs. 2,40,000/-, recoverable from the owner and driver of the offending

vehicle. Finding on issue No. 3 was returned in favour of the Insurer, whereas, the finding under issue No. 4 was given against the Insurer. It is important to note here that finding on issue No. 5 was against the respondents and it was held that there is nothing on record, if there was any collusion between the claimants and respondent Nos. 1 and 2. Issue No. 6 was decided in favour of the Insurer and it was held that there was a violation of the condition of the insurance policy by the insured as the driver was not found to have a valid driving licence at the time of accident. Ultimately, an award of Rs. 2,40,000/- was granted in favour of the claimants and the liability was fastened upon the driver and the owner. However, the Insurer was absolved of its liability.

This is how feeling aggrieved with the impugned award, the claimants have come up in appeal (F.A.O. No. 193 of 1994) for the enhancement of compensation, whereas, the owner and driver have challenged the findings returned on issues No. 3 and 6, by way of filing F.A.O. No. 733 of 1994. They, both, have prayed for shifting the liability of making the payment of compensation upon the Insurer, as the offending vehicle was duly insured with United India Insurance Co. Ltd., at the time of accident.

I have heard learned counsel for the parties and gone through the record of this case carefully.

Shri P.S.Dhaliawal, learned counsel for the claimants, at the first instance, argued that here in the instant case, Gurtej Singh

(deceased) was an agriculturist and was a young man of 28 years. So, his income should have been assessed at least at Rs.3,000/- per month, out of which, only 1/3rd should have been deducted for his personal expenses, whereas, the learned Tribunal has not done so. At the same time, he also submitted that a multiplier of 18, in the circumstances of this case, should have been applied, while assessing the total compensation. In support of his this argument, he also placed reliance upon **State of Haryana and another v. Jasbir Kaur and others** ***2003 (3) PLR 414.***

On the other hand, learned counsel for the owner/driver as well as the Insurance Company have supported the observations of the learned Tribunal, while granting a total compensation of Rs.2,40,000/-, after applying a multiplier of 16.

I have given my thoughtful consideration to the aforesaid submissions made by the counsel for the parties and find that in the instant case, the accident, which had taken place in the year 1990, the victim was 28 years of age and an agriculturist by profession. It is well settled that normal rule about the deprivation of income is not strictly applicable to cases, where agricultural income is the source. However, at the same time, attendant circumstances have to be considered. A perusal of the evidence brought on the file justifies the observations of the learned Tribunal, where it had assessed the monthly income of the deceased at Rs.2,000/-, which comes to Rs. 24,000/- per annum. In paragraph 19 of the impugned award, learned Tribunal has not given any reasoning as to why

deduction of more than 1/3rd has been made on account of personal expenses of the deceased, while assessing the dependency of the claimants. Here in the instant case, there are four claimants, i.e. Widow and three minor children of the deceased. As such, it is quite reasonable and just to observe that deceased Gurjet Singh must have been spending 1/3rd out of his total income on his own count. Hence, dependency of the claimants is assessed at Rs. 16,000/- per annum instead of Rs. 15,000/- per annum, as observed by the learned Tribunal, in the aforesaid paragraph of the award. I have also gone through the facts of the above cited ruling, relied upon by the learned counsel for the claimants/appellants and find that there, the accident had taken place in the year 1999, whereas, in the present case, the accident had taken place in the year 1990. In this case, the multiplier of 16 has been applied and at the same time, interest at the rate of 12 per cent per annum was awarded by the learned Tribunal, if the payment was not made within one month of the award. Admittedly, the payment in the instant case was not made to the claimants, within one month of passing of the award. However, the Apex Court, in the case of ***Jasbir Kaur and others*** (supra) had granted interest at the rate of 9 per cent and the multiplier of 18 was applied while assessing total compensation on account of death of an agriculturist, who was 25 years of age. Here in the instant case, the deceased was 28 years of age and the claimants are entitled to interest at the rate of 12 % per annum on the awarded amount of compensation.

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Thus, in the totality of the circumstances, as discussed above, I am of the considered opinion that the multiplier of 16, applied by the learned Tribunal, is quite reasonable and justified. On computation, as discussed above, the annual dependency of the claimants is worked out at Rs. 16,000/- per annum, which comes to Rs. 2,56,000/- instead of Rs. 2,40,000/- as assessed by the learned Tribunal, by applying multiplier of 16. The claimants shall further be entitled to the interest at the rate of 12% per annum on this aforesaid amount of compensation, from the date of application till realization.

Now adverting to the fixing of liability to pay the aforesaid amount of compensation to the claimants, in this regard, Shri A.S.Jattana, learned counsel for the appellants (driver and owner) referred to the statement of RW-2, Bikkar Singh (driver), a witness of the Insurer, wherein, he stated that he was holding a valid driving licence, for driving the tractor, at the time of occurrence of the accident, which was issued 7-8 years ago. He then also relied upon **Suresh Mohan Chopra v. Lakhi Prabhu Dayal and others,** ***1991 (2) ACJ 1*** and then submitted that the onus was upon the Insurer to establish that the driver had no licence, but the said onus has not been discharged in this case by the United India Insurance Company Ltd., respondent No.5, with whom the tractor was admittedly insured, vide policy, Ex. R3. As such, he contended for holding the Insurer liable to pay the amount of compensation.

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On the other hand, Shri Ravinder Arora, learned counsel for the Insurer, also did his best to justify the findings arrived at by the learned Tribunal, whereby the Insurer was absolved of its liability.

I have given my holistic view to the aforesaid arguments advanced on behalf of the parties and find that the submissions raised on behalf of the owner and the driver of the offending vehicle are not devoid of merits, inasmuch as, a perusal of the statement of Bikkar Singh, who was examined by the Insurer as RW-2 on 12.1.1993 goes a long way to show that he categorically admitted that on the date of occurrence of the accident, he was having licence for driving jeep/tractor, which was issued to him 7-8 years ago, by the Licensing Authority, Sangrur. However, he could not tell as to in which year, the said licence was obtained by him. At the same time, in his examination-in-chief, he also stated that his said licence was lost. Then he stated that he had also disclosed this fact to the Investigating Officer. He further stated that after the loss of his licence, he had obtained a learner's licence, which has been proved as Ex. R-1.

The learned Tribunal has ignored this aforesaid evidence consisted in the statement of Bikkar Singh, driver, simply, on the ground that no such licence for driving tractor was found in the record from the year 1985-1988 brought by RW-3, H.C.Chaudhary, Clerk of the office of D.T.O. Sangrur. In fact, the learned Tribunal has not appreciated the statement of RW-3 in right perspective. The said witness deposed only on the basis of the record consisted in the Register meant for issuing Learners

licences and not from the relevant regular register maintained by the Licensing Authority, Sangrur, for the purpose of issuing regular driving licences. It has also come in the statement of RW-2, Bikkar Singh, driver who was a witness of the Insurer that after the loss of his earlier licence, on his application, he was issued a learner's licence (Ex. R-1). Thus, the onus was on the Insurer to prove from the relevant record meant for issuance of regular driving licences, that Bikkar Singh was not issued a licence for driving the tractor. The said onus is not proved to have been discharged by the Insurer. It is well settled that under Section 149(2)(ii) of the Motor Vehicles Act, 1988, the insurer would not be allowed to avoid its liability towards the insured, unless the said breach or breaches (of the policy) on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident.

Thus, taking an over-all view of the evidence led by the Insurer in the statement of RW-2, Bikkar Singh, driver and RW-3, H.C.Chaudhary, Clerk, DTO office, Sangrur, as well as the law laid down in ***Suresh Mohan Chopra's*** case (supra), the findings returned on issue No. 6, by the learned Tribunal, absolving the Insurer of its liability to pay the entire amount of compensation, are hereby reversed.

In view of my foregoing discussion, both the appeals are hereby allowed in the terms indicated above and consequently, the claimants are entitled to a total compensation of Rs. 2,56,000/- together with interest at the rate of 12% per annum from the date of application, till

actual realization. It is also made clear that half of the total compensation shall go to the widow of the deceased, whereas, the remaining half will be apportioned equally by her three children. The entire amount of compensation shall be paid by the Insurer, i.e., United India Insurance Company Ltd., in the manner indicated above.

Before parting with this judgment, it is made clear that if the amount of award, as given by the learned Tribunal, is proved to have already been paid by the owner and driver to the claimants, in that eventuality, they shall be entitled to recover the same from the Insurer, i.e., United India Insurance Company Ltd., together with interest at the rate of 12% per annum from the date of payment to the claimants, till realization.

No costs.

[PRITAM PAL]
JUDGE

Sept. , 2006
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